

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

Meeting Summary

Mortgages Sub-Work Group **General Assembly Building, 6th Floor Speaker's Conference Room** **October 21, 2010, 1:00 P.M.**

Participants: Delegate Marshall, Senator Watkins, Michele Watson, Bill Ernst, Bill Shelton, Ali Faruk, Brenda Hicks-Massey, Fred Bryant, Nick Kyrus, Martin Johnson, Eddie Desch, Maureen Stinger, Alexander Macauley, Chris Whyte, Travis Hill, Steve Baugher, Jay Spruill

Staff present: Elizabeth Palen, Jillian Malizio

I. Welcome and Call to Order

- Delegate Danny Marshall, *Chair*
- Call to order at 1:02 PM.

II. Mortgage Loan Originator Status Update

- **Susan Hancock**, *Deputy Commissioner, Consumer Finance, State Corporation Commission*
 - Effective July 1 2009—people needed to be licensed as Mortgage Loan Originators (MLO) if they take a loan or negotiate the terms of a loan.
 - The SCC started to receive applications in August 2009.
- **Nicholas Kyrus**, *Deputy Commissioner, Corporate Structure and Research, SCC*
 - As of yesterday the SCC has received 7,286 applications.
 - 1,633 persons withdrew their application during the process.
 - 4,538 applications have been approved.
 - 600 provisional licenses have been issued. These will be revisited by July 1, 2011.
 - 28 applications have been denied.
 - 1,087 applications are still pending.
- **Delegate Marshall**—Are applications denied for typical reasons or does the reasoning vary?
- **Nicholas Kyrus**—Some applications were denied because the applicant had criminal convictions many years ago. Others were denied because they gave false information, while some have trouble with their finances and couldn't meet the financial responsibility criteria.

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F. GARY GARCZYNSKI
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- Some of the 1,633 applicant who withdrew their application may have done so because they couldn't meet the requirements.
- **Delegate Marshall**—How is Virginia doing compared to other states?
- **Nicholas Kyrus**—It is difficult to compare because some states had the requirement before the SAFE Act was passed. One of the problems we were facing had to do with an applicants credit report. If there was no report, we elected to pull a credit report on our own which only costs three to four dollars. Some other states elected not to pull their own credit report and waited for the official one.
- **Delegate Marshall**—Are the members of the Virginia Mortgage Lenders Association getting any feedback?
- **Travis Hill, VMLA**—Licensing has been going pretty smoothly. It's going to be our job to continue to mortgage lenders on the need for licenses.
- **Nicholas Kyrus**—The SCC estimated it would receive 7,000 total applications. That number was reduced to 6,000 and we are right on target.
- **Susan Hancock**—The SCC has received numerous inquiries from localities, non-profit organizations, and certified Housing and Urban Development (HUD) counselors, who were not aware the law may apply to them because of the definition of MLO.
 - There is a difference in the definition of MLO between Virginia's statute and the Safe Act. The federal definition. refers to a person who takes a mortgage application *and* offers or negotiates the term for compensation or gain. In Virginia, the definition refers to a person who take a mortgage application *or* refers offers or negotiates the term.
 - The Virginia statute uses "or" because of the concern that a loophole would be created.
 - Also, the SAFE Act uses the language "for compensation or gain" but the Virginia legislation does not include this language.
 - HUD was asked about this issue, their response was that until the final regulations were published, it's up to the states how they want to handle the issue.
- **Maureen Stinger, SCC**—Non-profits aren't the only groups that are affected, localities are impacted as well. They don't know if their employees have to be licensed to do these programs.
- **Susan Hancock**— There have been a few situations with companies that tried to get around the law. These companies would have certain people take the applications having other people process them.
- **Bill Shelton, Virginia Department of Housing and Community Development (DHCD)**—DHCD agrees that MLOs need to be licensed. A question arises when something isn't exactly MLO but could be MLO. The Down Payment Assistance Program and the Neighborhood Stabilization Program were shut down for a short time period because people weren't licensed.
 - Granted two requests around those program and SCC said those programs do not need licensing.
 - Down payment assistance is a second deed of trust, intended to protect investment. Not intended as a mortgage.
- **Senator Watkins**—*Does that put a lien on the property?*
 - **Bill Shelton**—Yes, similar to a mechanics lien or an IRS lien. There is no interest rate and no obligation to pay it back unless covenants are broken.

- **Travis Hill**—In this market, if the selling price of the house drops below what the owner owes, do they have to pay back the difference?
- **Maureen Stinger**—The lien runs against the property, not the individual. When the property is sold the loan is forgiven.
- **Bill Shelton**—One circumstance where licensing becomes an issue is for the people who are dealing with these grants; the majority of them don't deal with 90% of the range of things that an MLO would do. A second circumstance deals with counselors who work with homeowners dealing with foreclosures. Are they subject to licensing? It has been speculated that they may be because they are calling the mortgage owners seeing if any relief may be possible with the existing mortgage. However, they are not creating new mortgages. VHDA hopes that the mere act of foreclosure counseling doesn't trigger licensing requirement.

III. Discussion of Mortgage Loan Originator Draft Legislation

- **Fred Bryant, VHDA**
 - Proposed draft bill is intended to do two things:
 - Give exemptions from MLO definition for DHCD and VHDA
 - Exempts grants from the definition of mortgage loan. A grant only triggers repayment if covenants are violated.
- **Maureen Stinger**—The reference to section 1503 is being stricken so that having MLO will not be defined by the SAFE Act, a new definition is being recognized.
 - The SAFE Act definition of mortgage loan talks about the loan being secured against property or a dwelling. There has been some confusion from manufactured housing where you will have a mobile home with a mortgage but don't own the property underneath.
- **Alexander Macaulay, Citigroup**—Why should these individuals be exempt? A lot of the fraud that has occurred is a result of individuals who take advantage of the position that they have whether it's by a non-profit or for-profit entity. Citigroup does not oppose the amendment, but I still don't hear the case for why these people don't need to be licensed.

Bill Shelton—We're not talking about loan originators. If a person is originating a mortgage loan, then they should be licensed. We're talking about grant programs that we don't think was intended to be covered by the legislation.
- **Michelle Watson**—Grant programs have defined and specific guidelines. There is no flexibility to change the terms or conditions of the grants. These are federal grants and the federal government audits those grants. Very specific guidelines are followed.
 - When doing lost mitigation and foreclosure counseling, the counselors take individual circumstances for that borrower at the time, look at their income and see if any terms could be modified to keep them remaining in their own home. Counselors don't do truth in lending, and passing the test would be a challenge for these people. There are a lot of great counselors who do a good job of keeping people in their homes, but the licensing test goes above what they do and what they know.
- **Senator Watkins**—I have concerns about any financial assistance that has a recorded document that must be submitted. If it was just a grant period, no lien, that's one thing. But if you're going to tie it back to the deed and put a lien against the property, then I think we are asking for trouble.

- **Bill Shelton**—What effectively that does is take individuals who would otherwise be able to access housing, and would stop it in their tracks.
- **Delegate Marshall**—This problem can't be unique to Virginia; other states have had to had this issue.
- **Senator Watkins**—The problem is that we don't have HUDs regulations.
- **Susan Hancock**—The issue has been discussed amongst the states. A lot of states are not requiring some of these individuals to get a license, some states are requiring it, and others are still are in limbo.
- **Senator Watkins**—Wouldn't it be more prudent to wait until we get some regulations? I understand the issue, but the whole thing we are going through right now is getting ready to blow up. Even the fact that there is one lien on the property, for a 10,000 grant becomes a legal matter in a foreclosure
- **Bill Shelton**—essentially what will happen with that interpretation it will stop them in their tracks.
- **Senator Watkins**—I don't mind if it's a grant that has no recourse to it. But the problem is
- **Delegate Marshall**—Senator Watkins you think we should sit tight until we get regulations from the HUD?
- **Senator Watkins**—On any part that has to do with a lien, I would say yes.
- **Travis Hill**—Michelle mentioned a trigger of truth in lending, if you tie it to transactions that trigger the truth in lending
- **Senator Watkins**—If we put an exemption in here, businesses will be built around getting to that exemption.
- **Bill Shelton**—In section 1508, truth in lending is part of the definition.
- **Senator Watkins**—How many local governments do we have involved?
- **Bill Shelton**—We operate through mostly regional groups. There are about twenty regional groups and twenty regional programs
- **Senator Watkins**—Foreclosure is the real issue, I think we need to be real careful who does any documentation for mortgages and loans, I would just as soon wait until the December 7, 2010 Full Housing Commission meeting and let the Attorney General's office sign off on this.
- **Maureen Stinger**—Attorney General's office doesn't have authority on this matter, the SCC has the authority.
 - Joe Face, Commissioner of the Bureau of Financial Institutions at the SCC has issued an opinion on the two programs. The language of the statute has been made applicable to broader range, so we would not have to approve every program.
- **Senator Watkins**—Maybe we can allow the two programs, but require a letter or permission from the SCC for any additional programs.
- **Maureen Stinger**—Perhaps we could add language in the statute that the SCC would approve the programs.
- **Bill Shelton**—The statute is for the over twenty programs.
- **Senator Watkins**—I like the idea that if somebody is going to be exempted that the commissioner has the opportunity to opine on them.
- **Delegate Marshall**—Lines 52-56 will be added and we will strike the new language from lines 71-84.
- **Senator Watkins**—Is there any information on foreclosure schemes?

- **Susan Hancock**—I can offer some information, but the SCC doesn't regulate the process. There is no law that mortgage servicers be licensed in Virginia; that hasn't been a big issue because Virginia a non-judicial foreclosure state. We don't get many complaints on the Mortgage Electronic Recordation System (MERS). In Virginia, the bulk of the foreclosure process is handled by the trustee.
- **Senator Watkins**—The trustees are having difficulty tracking down the mortgage holders, when they go to foreclosure they are left in a position of not being able to fulfill the documentation that they need to actually close. MERS was brought about because of Fanny Mae and Freddy Mac. They didn't become a problem until the subprime lending issue. My understanding of the issue is that the MERS documents are not legal documents and there not verifiable.
- **Jay Spruill, Virginia Banker's Association**—It is important we focus on the exact problem. In judicial foreclosure states there has to be an affidavit. Banks have been overwhelmed and may have done things faster as a result. They were stamping documents when they should have taken more time. According to the Wall Street Journal there had not yet been a single time where a persons foreclosure has wrongly occurred. This is more of a political issue.
- **Senator Watkins**—What is the incidence of foreclosures being stopped in Virginia?
- **Jay Spruill**—Some of the large institutions such as bank of America have stopped nationwide.
- **Senator Watkins**—GMAC opted to not slow down,
- **Jay Spool**—This has weighed on the stock market and real estate market.
- **Senator Watkins**—We need to make sure the systems works. I am surprised we are dependant upon a data system that has no verifiable mechanisms.
- **Delegate Marshall**—We need to redraft the legislation according to this discussion.

IV. Adjourn

- The meeting was adjourned at 2:08 PM.